IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.973 OF 2005

Malegaon Municipal Corporation .. ..Appellant
Versus
Shri Dinesh Ranchhoddas Mittal .. ..Respondent

Mr.S.M.Sabrad for appellant
Mr.Kishor Patil h/f P.N.Joshi for respondent

CORAM : P.V.KAKADE, J.

DATE : 12TH SEPTEMBER,2005

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by Addl. District Judge, Malegaon dated 30.10.2004 dismissing the appeal and confirming the judgment and order passed by Joint Civil Judge, Junior Division, Malegaon dated 13.3.1995 decreeing the suit of the plaintiff against the defendant-Malegaon Municipal Corporation.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for perpetual injunction against the defendant alleging that out of

Survey No.289 admeasuring 18 x 20 ft was possessed and owned by him and he applied for grant of permission to construction. The permission was not granted and refused by the Malegaon Municipal Corporation without assigning any reason and as such it was came to be granted and construction was made. Notice was issued to the plaintiff by the defendant for demolition of the work and hence the suit for injunction came to be filed. The defendant contested the suit, inter alia, denying the allegations and sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that by virtue of Section 189(6) of the Maharashtra Municipalities Act, 1965 it was proved that the permission was neither granted nor communicated and therefore, it was deemed to be granted and as such the construction was legal and notice was illegal. It was also held that the suit was tenable irrespective of that there was no notice under section 304 of the Act and the suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concluded that the findings recorded by the trail court were legal and proper and hence dismissed

the appeal. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal, as it was an admitted as well as evident position that despite of regular application made by the plaintiff under the relevant provisions of the said Act the defendant Council neither rejected nor granted the permission contemplated under Section 189(6) of the Act and as such it was deemed to be granted and construction was made. It was further submitted on behalf of the appellant that the notice under Section 304 of the Act was not issued and therefore, the suit was not maintainable. This ground was made on the basis that amendment in the plaint was made after the suit was filed at which time plea for declaration was sought and hence the notice was required as per law. It is to be noted that the amendment which was granted seeking declaration related back to the original institution of the suit and therefore, under the circumstances notice was not mandatory under the given set of circumstances.

5. In the result I have no hesitation to hold that the appeal has no merits and therefore, stands dismissed

with no order as to costs. Consequently, Civil Application No.1490 of 2005 also stands dismissed with no order as to costs.